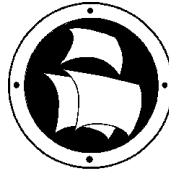


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February 12, 2015

Honorable Erin M. Wirth  
Administrative Law Judge  
Federal Maritime Commission  
800 North Capital Street, N.M.  
Washington, D.C. 20573-0001

*Via email to judges@fmc.gov and secretary@fmc.gov*

**RE: Docket No. 14-10: Econocaribe Consolidators, Inc. v. Amoy International, LLC  
Response to Amoy's February 6, 2015 Request to File a Supplemental Response**

Dear Judge Wirth,

This letter is submitted in response to the letter of Amoy's counsel dated February 6, 2015. Econocaribe seeks to rebut a few accusations raised in that letter.

**1. ECONOCARIBE DID NOT VIOLATE 46 C.F.R. §502.70(C)**

*a. Econocaribe Only Raised New Factual Allegation in Its Reply Brief*

As stated in Econocaribe's February 5, 2015 letter, Econocaribe only made a few factual allegations for the same ground for relief. *Sanders v. United States* defines "ground" as "a sufficient legal basis for granting the relief sought." and "identical grounds may often be proved by different factual allegations." *Sanders v. United States*, 373 U.S. 1, 16 (1963). Amoy argued that *Sanders* is applicable to habeas corpus cases but inapplicable here. However, In reaching the above definition, Supreme Court cited to *Wilson v. Cook*, 327 U.S. 474, 481 (1946) and *Dewey v. Des Moines*, 173 U.S. 193, 198 (1899); both are civil, non-habeas corpus cases.

Courts in civil cases differentiate factual allegations from grounds for relief, just as is done in habeas corpus matters. The same factual allegations can constitute different grounds for relief. *See Wilson v. McRae's, Inc.*, No. 01 C 281, 2002 WL 548726, at \*2 (N.D. Ill. Apr. 10, 2002) aff'd, 413 F.3d 692 (7th Cir. 2005). Conversely, the same grounds for relief can be supported by different factual allegations. *See SalesBrain, Inc. v. AngelVision Technologies*, No. C 12-05026 LB, 2013 WL 2422762, at \*2-4 (N.D. Cal. June 3, 2013) (new factual allegation added in support of the same ground for relief satisfies pleading standard). Thus the addition of facts does not constitute the addition of grounds.

As stated in Econocaribe's previous letter, the primary ground upon which Econocaribe has consistently sought relief is that Amoy knowingly misdeclared the cargo at issue. Initially, Econocaribe sought to have Amoy's knowledge imputed from its employee's actual knowledge. Now, additionally, Econocaribe points out Amoy's actual or constructive knowledge arising from its self-described capacity as a used tire dealer. This is a new factual *allegation* rather than a different ground for relief.

Of note is the fact that Amoy has struggled mightily with the issue of "knowledge" when that is not the core issue. Having elected the role of (sophisticated) shipper, Amoy was obligated to make accurate declarations of the cargo tendered under innumerable laws including the Shipping Act, Dept. of Commerce regulations, 19 USC and the Customs regulations. Having failed to do so, its denial of "knowledge" is unavailing.

*b. Econocaribe's Rewritten Undisputed Facts are the Identification of Undisputed Facts*

Econocaribe submitted a new statement of undisputed facts in order to identify facts that are not disputed<sup>1</sup>. The purpose of the statement of undisputed facts is to "assist the court in identifying the material facts that entitle the movant to judgment as a matter of law, and determining whether those material facts are in dispute." *Ford v. Lumbermens Mut. Cas. Co.*, 197 F.R.D. 365, 366 (N.D. Ill. 2000). Because Amoy disputed some of the statements in Econocaribe's original motion, Econocaribe simply identified those undisputed in its new statement of undisputed facts.

As to several new facts (§29 and 30), properly authenticated, Econocaribe believes that they are not subject to genuine dispute.

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<sup>1</sup> Only a few paragraphs in Econocaribe's new Statement of Undisputed Facts referred to the internet printouts which Amoy wants to dispute. However, those are Amoy's own statement on the Internet. Amoy can only challenge these printouts on ground of lack of authentication. Econocaribe will supplement proper authentication.

*c. Econocaribe's Tariff, Internet printouts, and Federal Complaint are all Matters Closely Related to Amoy's Response*

Amoy claimed in its reply brief that Econocaribe failed to identify any service contract or tariff in the original motion. E.g. Pg. 2, 11, Amoy's Opp. Memo. Econocaribe's Tariff was submitted in order to rebut Amoy.

Amoy denied knowledge of cargo as used tires prior to the shipment. E.g. ¶ 6, Statement in Opp. to MSJ. The Internet printouts are rebuttal of Amoy's claimed lack of knowledge.

Amoy claimed that it was not familiar with abandonment procedure. ¶14, Statement in Opp. to MSJ. Econocaribe sought to rebut this statement with the fact of Amoy have previously been sued for large demurrage damages and failure to arrange delivery by another carrier. The large demurrage damages and failure to arrange delivery suggest Amoy might try to abandon that shipment, indicating its familiarity with abandonment procedure. In any event, why should Amoy, an NVOCC electing to act as shipper on Econocaribe's bill of lading, look to the NVOCC Econocaribe, which is similarly situated vis a vis Maersk *on account of Amoy*, for guidance? Having put Econocaribe in this untenable situation by its own acts, Amoy has a common law duty of indemnity to Econocaribe to relieve the situation, not the other way around.

*d. Econocaribe Did Not Reargue Points Argued in the Original Motion*

Amoy claimed that Econocaribe violate 46 C.F.R. § 502.70(c) by rearguing points made the new statement of undisputed facts. These rebuttals are not reargument of the same points - the previous argument sought to present the facts. Amoy disputed some of the facts as hearsay. Econocaribe therefore argued different points - that they are not hearsay.

Since the statement of undisputed facts is to "assist the court in identifying the material facts that entitle the movant to judgment as a matter of law, and determining whether those material facts are in dispute," *Ford v. Lumbermens Mut. Cas. Co.*, 197 F.R.D. at 366, a new statement serves the same purpose. There is no intention on Econocaribe's part to usurp this Court's role in deciding what facts are undisputed.

## **2. The Internet Printouts Can be and Will Be Properly Authenticated**

Amoy objects to Econocaribe's Exhibits 2, 3, and 6 for lack of request for judicial notice or foundation. Econocaribe is not convinced that these are proper subject for judicial notice and will not, without more, make that request.

Econocaribe believes that Exhibit 6 can be admitted under the residual exception to rules against hearsay. Pg. 17 of New Statement of Undisputed facts.

Exhibit 2 and 3 can be and will be properly authenticated. As to hearsay rule, these are party-opponent statements. They are not the statements of Tradekey.com or other websites. They statements are not third person, such as "Amoy is" or "Amoy does" - they are first person: "We are Amoy," and "Our business" etc.

As to authentication, courts have consistently held that the burden to authenticate an internet print-out was met when "sufficient proof has been introduced so that a reasonable juror could find in favor of authenticity." *United States v. Tank*, 200 F.3d 627, 630 (9th Cir.2000); *see also Firehouse Rest. Grp., Inc. v. Scurmont LLC*, No. 4:09-CV-00618-RBH, 2011 WL 3555704, at \*4 (D.S.C. Aug. 11, 2011); *United States v. Standring*, No. 1:04CV730, 2006 WL 689116, at \*3 (S.D. Ohio Mar. 15, 2006). In *Tank*, this burden was met where the producer of the logs explained how he created the logs with his computer and stated that the printouts appeared to be accurate representations. *Tank*, 200 F.3d at 630.

In *Perfect 10, Inc. v. Cybernet Ventures*, pages printed from non-party websites with the internet domain address and the date they were printed were held to be properly authenticated by the declaration of the person who printed the pages. *Perfect 10, Inc. v. Cybernet Ventures, Inc.*, 213 F.Supp.2d 1146, 1154 (C.D. Cal. 2002) (prima facie burden was met because the declarations, particularly in combination with circumstantial indicia of authenticity (such as the dates and web addresses), would support a reasonable juror in the belief that the documents are what Perfect 10 says they are). Every page of Exhibit 2 and 3 contains the internet domain address and the date it was printed. This satisfies the "circumstantial indicia" requirement. The person who printed these pages, an Associate of the undersigned, has prepared and will submit a declaration to this effect.

Again, Econocaribe did not violate the Commission's Rules of Practice. Amoy's arguments, mistaken as they are, offer no extraordinary circumstances warranting a supplemental response. Therefore, Econocaribe respectfully requests your Honor deny Amoy's request.

Sincerely,  
**THE MOONEY LAW FIRM, LLC**



Neil Mooney, Esq.  
*For Plaintiff Econocaribe  
Consolidators, Inc.*

NBM

CC: Joseph N Mirkovich, Esq.